

Chapter 10:

Forming a Nonprofit Organization

Wetland focus areas often choose to create a nonprofit organization (also referred to as *incorporating*) because such status provides tax benefits and the ability to receive grant money. Depending on a focus area's situation, receiving funds to acquire wetland property can be a critical need. In such a situation, forming a nonprofit organization would be invaluable. The cost of incorporating is nominal, considering the potential funding that can be obtained. There is an initial, one-time fee, plus a minimal registration fee paid annually. However, the process of incorporating usually takes several months to complete. It's not an overnight event, so plan well and be patient!

The following is a general sketch of the incorporation process, provided by the Indiana State Museum Foundation.

1. A responsible person should arrange for an informal meeting of a group of interested citizens who may be potential officers and possibly the first directors of the organization.
2. A public organizational meeting should be held. At this meeting a chairman should be selected.
3. At this same organizational meeting, a discussion should be held to appoint a committee of potential members to propose by-laws and serve as applicants for incorporation. The law regarding not-for-profit corporations is included in Indiana Code 23-7-1.1. Some of the things it requires are:
 - Selection of a title for the organization
 - A set of purposes that are not for discriminatory gain of the members
 - A location for your principal office
 - The name and address of the person who will serve as the resident agent for the organization
 - A purpose (should be for civil, social, educational, or charitable purposes)
4. The name should include the word *corporation* or the word *incorporated* or an abbreviation for them. The name helps to avoid confusion with any existing name of a different organization.
5. You should determine if you desire to have more than one class of members. Every member should receive a certificate from the corporation. The certificate should state that the person is a member of the corporation, and the president or vice president and secretary should sign it.
6. It is advisable to have as officers a president, vice-president, secretary, and treasurer. Additional officers may also be recognized.
7. A set of by-laws that are consistent with the articles of incorporation must be filed with the Secretary of State. Provisions should be made for the frequency of regular meetings and their location. It will be necessary to have at least one annual meeting within six months after the close of each fiscal year of incorporation. Also, you should determine what your fiscal year will be. The law provides for meetings of members called by either the president, a majority of the board of directors, or a written petition signed by not less than one-tenth of the members authorized to vote under the articles of incorporation. Written notice should be given for the day and hour of the meetings, and the by-laws should specify the manner in which the notice will be provided.

8. The by-laws should also address the way in which the members have the right to vote, and they should establish what the quorum for a meeting would be.
9. The secretary should keep an accurate and complete list of all members who are entitled to vote.
10. You should also determine what actions could be taken without a meeting through written consent.
11. There must be a minimum of three directors of the corporation.
12. Unless otherwise stated, the directors are presumed to serve for a three-year term or until a qualified successor is elected. Provision should also be made as to how to fill vacancies.
13. A majority of the entire board of directors is necessary to constitute a quorum for a board meeting.
14. The articles of incorporation should provide for the removal of a director.
15. The officers of a corporation must be chosen by the Board of Directors in the manner, at the time, and on the terms that the by-laws prescribe. The statute expressly precludes the duties of the President and Secretary being held by the same person.
16. The corporation is required to keep a full and complete record of its financial condition.
17. There can be no advancement for services in the future, nor any loan of money or property to an officer or director of the corporation.
18. At the initial meeting, there must be at least three persons to sign a membership list and call for the meeting. The meeting is not supposed to be held for organizational purposes until the initial potential members have received written notice of the time and place at least 10 days in advance.
19. On forms obtained from the Secretary of State, articles of incorporation must be prepared and signed in duplicate, and the incorporators must acknowledge their signatures before a notary public. Duplicate copies of this document should be submitted to the Secretary of State, along with the appropriate filing fee.
20. After receiving the articles and the fee, the Secretary of State issues a certificate of incorporation and returns the second copy of the articles to the representatives of the incorporators.
21. Once the corporation is established, an annual report and filing fee must be filed every year with the Secretary of State. Failure to file annual reports for two consecutive years causes administrative dissolution and termination of the corporation.

These steps only provide a general description of the process of incorporation. If you are interested in incorporating, you will want to request an information booklet on the process of forming a nonprofit organization from the Internal Revenue Service. You will also want to get a copy of the by-laws and articles of incorporation of another organization with similar goals. This will give you an idea of where you're headed and help you become more familiar with the process as you move through it. You will also want to seek legal counsel.